

Remarks:

Regarding the claim rejections under 35 USC 112:

The currently amended claims are believed to fully address and overcome the Examiner's grounds of rejection.

The newly presented claims find full support in the patent specification as filed; reference is made to paras. [[0049], [0050], [0067] — [0069] of applicant's published patent specification, US 2007/0131248.

Regarding the rejection of claims 1-6, 9-14, 18-25 under 35 USC 103(a) in view of US 2002/0032135 to Verdrel-Lahaxe (hereinafter "Verdrel-Lahaxe") in view of US 2002/0107156 to Shaw (hereinafter simply "Shaw"), and further in view of US 6412634 to Telesca et al (hereinafter simply "Telesca"):

The applicant traverses the Examiner's rejection of the indicated claims in view of the combined references to Verdrel-Lahaxe, Shaw and Telesca. The Examiner's attention is directed to currently amended independent claims 1 and 18 which have been amended to now require a "fixing agent". Such an agent is disclosed in applicant's published specification in the following passage:

[0049] Suitable the heat generating agent is retained or impregnated within the sheet material, preferably using a fixing agent, and whereby in use shedding of the heat generating agent is inhibited, preferably substantially avoided.

The Examiner's primary reference to Verdrel-Lahaxe fails to include any indication of any such "fixing agent". Indeed in view of the fact that Verdrel-Lahaxe's compositions are directed to what are essentially anhydrous, topical composition for the treatment of the face, skin and other topical sites on the body, it is clear that Verdrel-Lahaxe's compositions are primarily applied directly from a suitable container to the topical

surface. The Examiner relies upon the following passage from Verdrel-Lahaxe to introduce the utility of those compositions on a wipe or sponge article:

[0090] Thus, the present invention relates also to a cleansing article which includes a water-insoluble substrate and a composition such as above-defined. The water-insoluble substrate may be a sponge or a wipe, for example a wipe from nonwoven material, with one or several (two or more) layers, the wipe being dry or humid.

Verdrel-Lahaxe however does not provide any indication that his articles additionally require a "fixing agent" which is required of certain preferred embodiments and which the applicant now requires in presently amended claims 1 and 18. Indeed, Verdrel-Lahaxe is silent as to the utility of any such 'fixing agent' or of any potential need therefore. Accordingly, Verdrel-Lahaxe both fails to anticipate, or to suggest in any remote way, the applicant's currently claimed invention when considered alone or jointly with the secondary Shaw or Telesca references.

Shaw also fails to anticipate or to render the currently claimed invention as being obvious when considered singly or jointly with Verdrel-Lahaxe or Telesca. The Examiner relies upon Shaw as that reference allegedly "... teaches the equivalency of anionic, nonionic or amphoteric surfactants with cationic surfactants..." (Office Action, page 6). The applicant believes that this assertion is moot in view of the currently amended claims, which now require a "fixing agent", which is not taught or suggested as being needed by the compositions of Verdrel-Lahaxe. Thus the Examiner's reliance upon Shaw to expand the "equivalency" of the surfactants of Verdrel-Lahaxe is believed to be irrelevant in view of the newly presented limitations of claims 1 and 18. Shaw itself does not relate to articles or compositions which are 'self-heating' when contacted with water of the type provided by applicant's claimed articles or the cosmetic preparations provided by Verdrel-Lahaxe. Thus, nothing in Shaw should be considered as relevant to any such "self-heating" compositions. Any such interpretation of Shaw would extend beyond what is actually taught by Shaw, and would be improper, and would be an impermissible

"hindsight reconstruction" of the applicant's claimed invention. The examiner is reminded that it is well settled law that is impermissible to "pick-and-choose" amongst a prior art reference's purported teaching, whether considered alone or in combination with other references, in order to use the benefit of hindsight in order to arrive the applicant's claimed invention. See *Ex Parte Kranz* 19 USPQ2d 1216 (PTO Bd, 1991); *In re Kerkhoven* 205 USPQ 1069 (CCPA, 1980); *H.L. Gore & Associates, Inc. v. Garlock Inc.* 220 USPQ 303 (CAFC, 1983)

The Examiner's further consideration of Telesca either considered singly or in view of the Verdrel-Lahaxe reference neither anticipates or could be considered as rendering the currently claimed invention as being obvious. Telesca's towelette dispenser provides no applicable teaching concerning substrate articles which are loaded with a cleaning agent, a heat generating agent which is selected from a dehydrated salt, other mineral or a mixture thereof, and a fixing agent. In its most relevant parts, Telesca would at best be relevant only in suggesting a package for wipe or sponge articles which have entrained upon them the topical cosmetic compositions according to Verdrel-Lahaxe. However, as discussed above Verdrel-Lahaxe fails to disclose a composition which necessarily includes a "fixing agent" as is now claimed by applicant's presently amended independent claims.

Accordingly, reconsideration of and withdrawal of the outstanding rejection with respect to the amended claims is solicited.

Regarding the rejection of claims 1-6, 9-10, 14, 18-23 under 35 USC 103(a) in view of US 2002/0107156 to Shaw thereafter simply "Shaw"; in further view of US 6412634 to Telesca et al thereafter simply "Telesca";

The applicant traverses the Examiner's rejection of the indicated claims in view of the combined Shaw and Telesca references, particularly in view of the presently amended claims presented in this paper.

With reference first to Shaw, as discussed *supra*, a review of the disclosure of that document reveals that the Shaw articles themselves are not related to articles or compositions which are 'self-heating' when contacted with water of the type provided by applicant's claimed articles (or the cosmetic preparations provided by Verdrel-Lahaxe.) Rather, as is clearly recited by Shaw, his articles are directed to high lathering articles which necessarily require a "hot melt" surfactants system to provide adhesion to the cleansing article, as is recited in the following excerpts from Shaw:

[0092] As disclosed above, the cleansing compositions of the instant invention are, preferably, "hot melt" surfactant systems. Hot melt surfactant systems have high viscosity at or around room temperature, and then melt (become substantially liquid) at higher temperatures. Such systems are advantageous during processing of a disposable, substantially dry (or dry to the touch) cleansing article since the surfactant system can be applied (e.g., coated, sprayed, extruded) to the substrate at a low viscosity (e.g., a liquid) at higher than room temperature, and then as the system cools down, it becomes a high viscosity paste or solid. In the present invention there is a required range of temperatures and viscosities at which these changes take place.

[0094] Another consideration is stability of the finished product. The cleansing composition must maintain a certain viscosity at or around room temperature (25° C.) so that when the product is stored, the system stays stable on the substrate (and does not melt off). This lower viscosity limit is at least 100,000 centipoise for the present invention. The viscosity at higher temperatures is preferably less than 100 million centipoise in order to keep the system easy to process.

[0095] There is also a temperature range at which the cleansing composition undergoes significant changes in viscosity. The instant cleansing compositions are highly viscous at room temperature, and melt into liquid form at a temperature below 125° C. The temperature at which the composition melts should not be too low in order to prevent the cleansing composition, which has been deposited on the substrate from becoming unstable (i.e., likely to melt) during normal usage conditions (room temperature up to ~25° C.),

but should not be too high or the temperature necessary in order to apply the cleansing composition to the substrate will degrade the surfactants and any perfume that may be present (>125° C.). Therefore, for the present invention, it is preferred that the significant viscosity change occurs at a temperature within the range of about 25° C. to about 125° C., preferably within the range of about 40° C. to about 70° C., and most preferably within the range of about 40° C. to about 60° C.

Thus any reading of Shaw clearly imparts to its reader that a key technical requirement of that article is the use of a pasty or "hot melt" surfactant composition which is loaded onto the substrate. Such is recited by Shaw, at the following excerpt:

[0158] E. METHODS OF MANUFACTURE

[0159] The cleansing articles of the present invention are manufactured by first producing the cleansing composition (paste) by addition of the components and mixing. The cleansing composition is then added to the appropriate water insoluble substrate of the first layer via a conventional method which may include, but is not limited to, spraying, slot coating, and roll transfer (e.g., pressure roll). Where appropriate, the water insoluble substrate of the second layer is then placed on the substrate of the first layer over the cleansing composition.

wherein it is clear that a all of the non-substrate constituents of Shaw are applied in a single, preformed "paste" mass which is applied between the substrate layers, e.g., a laminate or "sandwich".

At pages 8 - 9 the Examiner asserts that Shaw may include any of a variety of other constituents which are "conventionally used in a given product type provided that they do not unacceptably alter the benefits of the invention" (citing Shaw, para. [0127]). The applicant disagrees that absent an impermissible use of "hindsight reconstruction", that Shaw would suggest the currently claimed invention as being 'obvious' whether considered singly or in conjunction with the secondary reference to Telesea. Although Shaw recites the potential for use of a potential "comacopia" of further constituents, such is akin to a chemical supply catalog which, while listing broad classes of compounds or materials, yet does not necessarily identify or suggest which such compounds or materials may be suitable selected and used to provide compositions, according to the currently presented claims which provide the specific technical features of the compositions taught by the applicant and recited in their specification. Shaw provides no specific teaching or suggestion as to any benefit why a skilled artisan, would find any motivation to select a "heat generating agent", (e.g., zeolite) and concurrently also identify the need for a "fixing agent" to provide improved retention of the heat generating agent to the substrate. Shaw rather teaches an opposite technical effect; as his composition are all formed into a "paste" which is thereafter "sandwiched" between two substrate layers, a skilled artisan reading Shaw's requirement that his surfactant system is necessarily a high melt temperature surfactant system, viz., "hot melt" would understand that any and all constituents mixed or compounded in this "paste" would owe their adhesion to the two substrate layers due to the stickiness of the selected surfactants. Any other conclusion would at best be one of pure speculation, and at worst be due to an exercise of impermissible "hindsight reconstruction". Should the Examiner maintain the present rejection, the applicant requests that pursuant to M.P.E.P. Section 2144.03C, that the Examiner specifically provide documentary evidence in the next Office Action supporting the Examiner's assertion that at the time of the invention that a skilled artisan considering the technical problem faced and overcome by the currently claimed invention would be "obvious" to a skilled artisan considering Shaw singly or in conjunction with Telesea.

The Examiner's further reliance upon Telesca in view of Shaw is also believed to be inappropriate. For the reasons noted immediately above, nothing in Shaw should be considered as relevant to any such "self-heating" compositions. Nothing in Shaw appropriately teaches or suggests the currently claimed invention. As such, Shaw fails to provide the type of self-heating substrates which are required of claims 1 and 18. The further consideration of Telesca would at best suggest a package for Shaw's articles, but such falls far short of addressing or overcoming the fatal shortcomings of Shaw discussed immediately above.

Accordingly, reconsideration of and withdrawal of the outstanding rejection with respect to the amended claims is solicited.

Regarding the rejection of claims 11-13 under 35 USC 103(a) in view of US 2002/0101156 to Shaw (hereinafter simply "Shaw"), in further view of US 2002/0032135 to Verdrel-Lahaxe (hereinafter "Verdrel-Lahaxe");

The applicant traverses the Examiner's rejection of the indicated claims in view of the combined references to Shaw in view of Verdrel-Lahaxe, and of Telesca in view of Verdrel-Lahaxe.

For the sake of brevity the applicant herein incorporates by reference all of the foregoing remarks concerning the Verdrel-Lahaxe, Shaw and Telesca references as being equally applicable to the currently rejected claims. The Examiner is respectfully reminded that in any rejection under 35 USC §103, it is not whether the differences themselves would have been obvious, but rather, whether the claimed invention as a whole, would have been obvious. A prior art reference must be considered in its entirety, as a whole, including portions that would lead away from the claimed invention. (See MPEP, at §2143.02.)

For reasons outlined above, none of the Verdrel-Lahaxe, Shaw and Telesca render the currently rejected claims as being obvious thereover.

Accordingly, reconsideration of and withdrawal of the outstanding rejection with respect to the amended claims is solicited.


PETITION FOR A ONE-MONTH EXTENSION OF TIME

Applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;


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Fel. 212 808-0700

Enclosure – Request for Continued Examination